IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 317 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

GUJARAT AGRO OIL ENTERPRISES

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner

MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 07/02/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

The Income Tax Appellate Tribunal has referred the

following two questions for our opinion arising out of ITA Nos.652 & 653/Ahd/83, in relation to assessment year 1978-79 and 1979-80.

"1. Whether, on the facts and in the circumstances of the case, the finding of the appellate Tribunal that the assessee is entitled to carry forward the claim of relief under sec.80J of the IT Act, 1961, relevant to the years when the assessee suffered loss and is entitled to get the said relief in the year in which the assessee had profits is correct in law?"

"2. Whether, the deduction u/s.80J of the Income Tax Act, 1961, is permissible even when claim has not been made by the assessee even when claim has not been made by assessee in first or the relevant asstt. year if there was a loss in such year and it will be a sufficient compliance if such a claim is made when there is profit or gain against which the deduction could be adjusted?"

The material facts, in nut-shell, giving rise to this reference may be stated, first. The assessee claimed relief under section 80J of the Income Tax Act, 1961, in respect of which no claim was made before the ITO in earlier years, as there was no positive taxable income. He, therefore, claimed carry forward of the same. This claim was rejected by the Commissioner of Income Tax (Appeals).

The matter was carried in appeal before the Tribunal which found that the assessee is a new industrial unit and in the assessment year 1974-74 to 1975-76, no claim was made by the assessee for relief under section 80J. The reason for not claiming the relief as given by the assessee was that in those years the assessee has no positive taxable income, and therefore, the relief was not claimed and it was carried forward to the subsequent years when there was a profit. The Tribunal took the view that when some relief is permissible under the law and if no specific claim is made even then that should be allowed by the authorities concerned. Similar question was considered by the Madras High Court in CIT v. Blue Mountain Ceramics Ltd., 123 ITR 385, wherein it was held that it was sufficient if the claim is made in the year in which there is a profit. Therefore, the claim of the assessee regarding carry forward of the claim under section 80J of the Income Tax Act, 1961 was allowed.

After having considered the facts and circumstances and the contentions and the factual position, in the light of the relevant case law, we are of the opinion that answer to question No.1 must be given in affirmative and question No.2 also must be given in affirmative, as it is corollary to question No.1.

In the circumstances, our answer to question No.1 is in affirmative, in favour of assessee and against revenue. In case of question No.2, though it is a corollary to question No.1, our answer is in the affirmative, against the revenue and in favour of the assessee.

In the result, the reference shall stand disposed of accordingly without any order as to costs.

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(vjn)